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Held at the Palais des Nations, Geneva,
on Tuesday, 23 April 1991, at 10 a.m.

Chairman: Mr. VOYAME

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The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 7)

Initial report of Panama (CAT/C/5/Add.24)

1. At the invitation of the Chairman, Mr. Velásquez, Mr. Sáenz Fernandez and Mr. Bonome Rivera (Panama) took places at the Committee table.

2. Mr. VELASQUEZ (Panama), Ambassador, Permanent Representative of Panama to the United Nations Office at Geneva, said that his delegation's introductory statement was intended to supplement the written report and to give Committee members a clearer and more specific idea of the way in which Panama was implementing the Convention.

3. As a State party to the Convention against Torture, Panama had taken the legislative, administrative and judicial measures required to prevent acts of torture from being committed in its territory. The Penal Code was currently being updated in accordance with a new prisons policy based, on the one hand, on the replacement of custodial sentences by substitute sentences and the replacement of pre-trial detention by measures such as conditional release and non-imprisonment and, on the other hand, on decriminalization. Any ill-treatment inflicted by public officials was, moreover, regarded as an offence.

4. Mr. SAENZ FERNANDEZ (Panama), describing the measures taken in his country to give effect to the principles referred to by Mr. Velásquez, said that the protection of the physical integrity and freedom of the individual were a basic characteristic of democratic States. Those fundamental values had been set forth in the French Declaration of Human Rights of 1789 and reaffirmed by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders held in 1990 in Havana, where all delegations had emphasized the importance of alternatives to imprisonment.

5. So far as the Panamanian prison system was concerned, there was a programme for the application of the Standard Minimum Rules for the Treatment of Prisoners. In particular, funds had been earmarked for the construction of new prisons with amenities such as workshops, training centres, medical services and leisure and recreation areas designed to promote the humane and rational treatment of prisoners.

6. The first major principle followed in updating the Penal Code was that of "non-imprisonment", which, according to the science of criminology, would offset the negative effects of custodial sentences. Non-imprisonment could take four forms, the first being the postponement of the enforcement of the sentence. Thus, chapter VI, title I, book I, and, in particular, its articles 75 and 76, provided for the possibility of postponing the enforcement of a prison sentence if the convicted person was seriously ill or suffering from a mental illness or was a woman who was pregnant or who had given birth less than six months previously.

7. The second form of non-imprisonment was the suspended sentence. That possibility was covered by articles 77 to 81 of chapter VII, title I, book I, of the Penal Code. Article 77 gave courts the power to suspend conditionally, ex officio or at the request of the parties sentences not exceeding two years' imprisonment. Article 78 laid down the following conditions for imposing a suspended sentence: before committing the offence, the person concerned had to have led an exemplary life and then to have repented of the act. He also had to be a first offender and must fulfil any other obligations imposed on him by law. In granting a suspended sentence, the judge could place the person concerned under the control of the administrative and judicial authorities and the suspension of the sentence would be cancelled if the person concerned did not fulfil the obligations imposed on him or committed a further offence during the period of the suspension.

8. Moreover, in cases where the judge could not suspend the sentence because the requisite conditions had not been meet, he was nevertheless empowered to replace the prison sentence by imposing daily fines, which had to number between 25 and 75, or by a veral penalty such as a public or private reprimand. Under article 48 of the Penal Code, the amount of the daily fine was calculated on the basis of the sentenced person's resources. If he was a wage-earner, the daily fine could not exceed 50 per cent of the daily wage. If he was in a difficult financial position, the judge could even grant a postponement of the payment of the daily fines.

9. The third form of non-imprisonment, conditional release, was governed by chapter IX, title II, book I, of the Penal Code. Prisoners who had served two thirds of their sentence and whose behaviour had been good could be conditionally released subject to the following obligations: to have a fixed abode and not to change residence without prior authorization; to comply with the relevant control regulations; to have lawful means of support; not to commit any new offence; and to submit to the monitoring of the body designated by the executive.

10. The second major principle of Panama's prisons policy was decriminalization, under which jurisdiction was tranferred from the criminal courts to the civil or administrative courts and there was no penalty if the victim received compensation for the injury or damage he had suffered or had reached an agreement to that effect with the person who had committed the offence, provided that the latter was a first offender and the offence was a minor one, in accordance with article 1984 of the Judicial Code, as amended by Act No. 3 of 1991.

11. The Panamanian authorities were also anxious to avoid pre-trial detention. Act No. 3 of 1991 thus provided for the application of measures other than pre-trial detention in the case of persons under a sentence of less than two years in prison who had no criminal record and had made no attempt to elude Panamanian justice, as well as in that of persons over 65 years of age and pregnant women. The substitute measures were the following: prohibiting the accused person to leave the territory of the Republic without the court's authorization; obligation to report periodically to a public authority; obligation to reside in a particular place within the jurisdiction of the competent court; obligation to stay at home or, as the case might be, in a medical establishment; and obligation to put up bail. The judge decided at his discretion, in the light of the accused person's record and personality, what measure would apply.

12. The prison system, which was governed by article 28 of the Constitution, was based on the principles of security, rehabilitation and social protection. All acts injurious to prisoners' physical or mental integrity were prohibited and prisoners were given training to help them re-enter society. The country's prisons were currently being renovated in order to give effect to the Standard Minimum Rules for the Treatment of Prisoners.

13. Judges and magistrates of higher courts visited prisons every month in order to inform prisoners of the progress being made in their case and to hear any complaints or claims about conditions of detention. They took immediate steps to correct any abnormal situation.

14. The prison system was governed by several different laws not yet combined in a single code on the enforcement of sentences. Act No. 24 of 19 February 1951 establishing the juvenile court regulated all aspects of the prevention of juvenile delinquency and the treatment of minors. The situation of minors was currently being given careful consideration as part of the revision of family law, with participation not only by court authorities, but also by social workers and psychologists during the review of individual cases.

15. The Correctional Department, which was an executive body jointly responsible with judicial bodies for the enforcement of sentences, did not operate satisfactorily and was being reorganized. Moreover, the condition of most of Panama's prisons left something to be desired and the present Government had earmarked funds for their renovation and improvement. The prison population was concentrated in four main establishments: Modelo prison in the province of Panama, Coiba penal colony in the province of Veraguas, David prison in the province of Chiriqui and Colon prison. A small proportion of the prison population was also housed in 20 or so small detention centres located near police stations. Modelo prison had opened in 1920 and Coiba penal colony in 1919. Those two establishments were having problems as a result of overcrowing, the shortage of educational and cultural activities, the lack of work and conditions of detention. Some buildings were in such a state of disrepair that they might have to be torn down. In the early 1980s, following the Torrijos-Carter agreements, the Panamanian Government had also been entrusted with the administration of Comboa prison, which had been built during the first quarter of the twentieth century with all the technical advances of the penitentiary science of the period and had been run by the United States army. It was now called El Renacer Rehabilitation Centre and its facilities were well maintained. The Centre had shipbuilding workshops whose production capacity was, however, not being fully utilized.

16. Most of the prisons were unable to produce a "criminological diagnosis" of prisoners and detainees owing to the shortage of qualified staff. The country's only three detention centres offering such a service, albeit without a well-defined programme, were Modelo prison, El Renacer Rehabilitation Centre and the women's rehabilitation centre. Forty-three posts had been created to back up the multidisciplinary teams working in Panamanian prisons.

17. With regard to the enforcement of sentences in general, he said that no provision was made for changes in the type of detention. There were also no rules relating to the transfer of prisoners to other prisons.

18. Current conditions of detention in most of the country's prisons were not compatible with the principle of the separation of prisoners according to sex, age and the stage reached in the proceedings in their case. As part of its prison reform plan, the Government therefore intended to guarantee the separation of convicted and accused persons, men and women and adults and children, and to implement the United Nations Standard Minimum Rules.

19. The education of prisoners and work as a means of rehabilitation were still not very common in Panamanian prisons. Literacy and general education programmes had been organized in some large prisons, such as El Renacer. In other prisons, programmes of agricultural and agro-industrial activities had been set up for prisoners. As far as religious freedom was concerned, the right of worship was exercised daily in prisons. The Panamanian Government considered that spiritual support was an important factor in the future rehabilitation of prisoners.

20. With regard to the right to information and communications by prisoners with the outside world, Decree No. 126 of 15 May 1990 regulated the prisoner's relations with his family and the community. A new act would soon be promulgated to guarantee the effective enjoyment of human rights in penal establishments. Regulations concerning prisoners' rights and duties guaranteed freedom of information in prisons and the possibility for prisoners to communicate with representatives of the executive and judicial powers and with international organizations. The Government also intended to adopt measures to enable prisoners to have intimate relations with their spouses under a system of conjugal visits which would take place in premises especially set aside for that purpose.

21. Under the act governing the national prison system, each prisoner received a wage, 90 per cent of which was remitted to the State as a contribution towards his keep, with the remaining 10 per cent being deposited in a savings account and handed over to the prisoner when he had completed his sentence. Work in prisons had not yet been properly regulated and prisoners were too often left with nothing to keep them busy.

22. The disciplinary system applicable to prisoners who broke the prison rules was governed by article 13 of Decree No. 126 of 15 May 1990. The Government intended to adopt machinery to determine the applicable penalties so as to rule out any penalty which would violate the prisoner's physical or psychological integrity and any measures which would entail violations of the human rights of his relatives or friends or restrict his relations with the outside world.

23. Considerable improvements had been made in the prison system in 1990, particularly through the establishment of a specialized civilian governing body, the introduction of training programmes for prison staff, the simplification of prison maintenance procedures, the improvement of conditions of detention and the re-establishment of visits to penal establishments.

24. The main plans for 1991 were the following: to set up two commissions responsible for improving the prison system; to restructure the national board of governors of penal establishments; to establish a school for the training of prison staff; to appoint civilian prison governors; to strengthen or, as the case might be, establish technical consultancies in prisons; to categorize

prisoners and to produce a technical diagnosis of each individual; to start up production in prison workshops which already existed in some prisons; to improve facilities and prisoners' living conditions; to draw up regulations for penal establishments; to encourage the use of substitute sentences; to build rehabilitation centres; to draft a bill governing the national prison system; to set up a scientific institute for criminological and penitentiary training; to introduce a progressive prison system; to improve conditions so as to promote full respect for prisoners' dignity and the prohibition of violent and cruel treatment; to organize prisoners' work according to their preferences and abilities; to promote university, civic, artistic, physical and ethical education for prisoners; to hold a census of the prison population every two years; to set up children's nurseries in women's prisons; to establish an organization to assist persons leaving prison and persons released conditionally; and to establish former prisoners' associations with a view to providing moral, economic, legal and social assistance to persons released from prison.

25. A national crime prevention council was to be set up in the Ministry of the Interior and Justice to plan and coordinate prevention policies. An office of professional responsibility of the national police and the judicial police had been established in September 1990 to make members of the police force assume their responsibilities and to guarantee their integrity. The office conducted objective and impartial inquiries whose results would be transmitted to the Director-General of Police, who would take the appropriate measures to combat any abuses committed by members of the police force in the exercise of their functions. All information communicated to the office was confidential. Any complaints and accusations submitted to it in written or oral form, including anonymous complaints, would be taken into consideration. Investigations could also, if necessary, be undertaken ex officio. To date, 23 cases of human rights violations had been the subject of investigations leading to disciplinary action and, in some cases, dismissals. The philosophy underlying Panama's prison policy was based on the principle of humanizing prisons; respect for human rights was to become the usual practice in all prisons in the country.

26. Mr. SØRENSEN (Country Rapporteur) thanked the members of the Panamanian delegation for their most informative oral introduction, but nevertheless expressed regret that the information had not been incorporated in the written report, so that members would have been able to study it at leisure and might not have had to ask certain questions.

27. In paragraph 7 of the report, it was stated that the Convention had become "the law of the Republic" and had to be "strictly complied with". The report nevertheless also indicated that several of the Convention's provisions had been expressly incorporated into Panama's domestic legislation. He therefore asked what procedure had to be followed in order to give effect to the Convention's provisions. Was it enough to state that the Convention had the force of law or did relevant provisions of the Convention have to be expressly incorporated into the Penal Code and other legislative texts? In that connection, he wished to know whether the fact that part 3 of the Judicial Code had entered into force in 1987 was in any way connected with Panama's ratification of the Convention against Torture in the same year. Was that pure chance or the logical consequence of the ratification of the Convention?

28. He also asked whether, for example, a definition of the act of torture within the meaning of the Convention had been included in Panama's domestic legislation.

29. He deplored the lack of detailed information on the way in which the Panamanian police was organized. Were there several different police forces, such as a municipal police or a State police, and, if so, by what authority or Ministry were they controlled? What were the powers of the Guardia Civil?

30. The report referred to the rights of detainees, but not to those which could be invoked by persons at the time of arrest. Could they be held incommunicado and, if so, for how long? Was the decision to that effect taken by the examining magistrate or by the police? Was there any special treatment for certain crimes, such as acts of terrorism, crimes against the State or drug trafficking? Was there any special treatment for members of conspiracies?

31. He also wished to know whether detainees had the right to be assisted by counsel immediately upon arrest or only at a later stage in the proceedings. Were they required to make a statement before being allowed to consult counsel? Did they have the right to choose their own lawyer or was he appointed ex officio? Could they communicate freely with counsel without the conversation being overheard or recorded? Was the lawyer part of the category of officials with whom a detainee was entitled to correspond without their correspondence being subjected to censorship? Could a detainee be examined by a doctor of his choice?

32. He asked whether there was a body of forensic pathologists in Panama, what their powers were and how they prepared their reports? He particularly wished to know whether such doctors simply made comments of an objective nature or whether they also reported detainees' allegations of ill-treatment. Was a forensic pathologist who examined detainees answerable to the Ministry of Justice or to the Ministry of Health?

33. Referring to paragraph 5 of the report, he asked exactly when the police investigation ended and the prosecutor's work began.

34. He was surprised that, according to paragraph 4 of the report, the maximum penalty incurred by a public servant who subjected a detainee to torture was only five years' imprisonment. That penalty seemed rather light, especially if the victim had been tortured to death. In that connection, he wished to know whether the penalty of two to five years' imprisonment provided for in article 160 of the Penal Code was supposed to be additional to a heavier sentence in cases where a detainee had suffered grievous harm as a result of a public servant's acts.

35. He would also appreciate further details on the provisions of Panamanian law dealing specifically with torture. Referring to paragraph 8 of the report, he asked what article 24 of the Constitution meant in the context of article 3 of the Convention relating to extradition. Whereas article 3 of the Convention prohibited the expulsion, refoulement or extradition of a person to a State where there were substantial grounds for believing that he would be in danger of being subjected to torture, article 24 of the Constitution referred to conditions under which Panama might extradite its nationals or aliens. He also inquired whether torture was regarded as one of the "political offences" which could not be invoked as grounds for extradition.

36. In paragraph 9 of the report, it was stated that the Penal Code prohibited violations of physical integrity, and he asked whether the same penalties were imposed in the case of violations of psychological integrity. Was an attempt to commit torture, as referred to in article 4 of the Convention, also a violation under Panamanian criminal law?

37. With regard to the implementation of article 10 of the Convention, he took note with satisfaction of the various measures referred to in paragraph 15 of the report and the plans mentioned orally by the members of the Panamanian delegation. More details concerning the training of medical personnel would be welcome, however, in view of the role sometimes played by doctors in the practice of torture.

38. Referring to the duty of States parties under article 11 of the Convention to keep under systematic review the arrangements for the custody and treatment of arrested persons, he said that he would be interested to see the new prison regulations, which had, according to the members of the Panamanian delegation, just been finalized. He would also like to have details of the courses and seminars organized for the benefit of detainees.

39. The Panamanian delegation had mentioned the existence of four large prisons and some 20 smaller establishments. Could it furnish other figures concerning, for example, prison capacity and the present prison population?

40. Referring to article 129 of the Panamanian Penal Code mentioned in paragraph 16 of the report, he said he was surprised that an accused person could be held in preventive custody for such a long period. He would like to know how many persons had now been held in preventive custody for over one year and how long preventive custody in Panama lasted on average.

41. With regard to the distinction between various categories of detainees depending on whether they were imprisoned for serious or less serious offences, he asked about the conditions of detention of detainees awaiting trial and those serving a prison sentence.

42. Speaking as a former director of a rehabilitation centre for torture victims, he asked what measures were taken in Panama to facilitate the re-integration of prisoners into society. Did Panama's apparent interest in the rehabilitation of prisoners imply that conditions of detention were particularly harsh?

43. He also noted that the report did not refer to measures to ensure the medical rehabilitation of victims of ill-treatment. Could the Panamanian delegation indicate how many public officials had been accused of the ill-treatment of prisoners since the ratification of the Convention?

44. With regard to the implementation of article 15 of the Convention, he noted that article 2120 of the Judicial Code cited in paragraph 17 of the report did not expressly rule out a statement obtained under duress.

45. Ms. DIAZ PALACIOS (Alternate Country Rapporteur) thanked the members of the Panamanian delegation for their oral presentation, which added valuable information to that contained in the report. In particular, she welcomed the draft of the reform of the prison system, the text of which she would like to see.

46. Recalling that one of the Committee's basic functions was to assist States parties in overcoming any difficulties that might arise in connection with the implementation of the provisions of the Convention at the national level, she said that it would be helpful if the Panamanian delegation could specify the date on which the obligations under the Convention had been incorporated into domestic law, thus explaining some parts of the report that were not clear. For example, she had some questions about the text of article 119 of the Panamanian Penal Code which was referred to in paragraph 16 of the report and did not correspond to the text contained in the Civil Code annexed to the report. The latter made no mention of the right of a victim of an act of torture to obtain compensation.

47. As already stated, most acts of torture were committed between the time of arrest and the time when the accused person was brought before the competent authorities. She would therefore appreciate additional information on the powers of the police in Panama and on the time-limits within which a person arrested by the police had to be brought before the judicial authorities. In that connection, she asked how many persons were still awaiting trial or had already been sentenced. She also took note of the disbanding of the Guardia Civil.

48. Had there been problems of prison overcrowding in Panama following the political disturbances of 20 December 1989 and had it proved necessary to take steps to remedy the situation? Some countries had resorted to amnesty in such cases and she asked whether Panama was currently considering that possibility.

49. In her capacity as alternate country rapporteur, she had received a number of reports from non-governmental organizations alleging disappearances, arrests on political grounds and sentences passed as a result of irregular procedures. She asked, in particular, whether political prisoners were treated in the same way as or differently from other detainees.

50. Lastly, she asked for details on the conditions of detention of drug traffickers under the new prison system.

51. Ms. CHANET, regretting that the written report submitted by Panama was rather brief, welcomed the detailed oral information provided by that country's delegation. Like Mr. Sørensen, she wished to know how the Convention could have been incorporated in Panama's domestic legislation otherwise than through the enactment of a domestic law. She also requested information on the ranking of legal instruments: if the Convention did not take precedence over domestic laws, could it be contradicted by a subsequent law? Was there a definition of torture (art. 1 of the Convention) in Panamanian domestic law? Under article 160 of the Penal Code, any violation of physical integrity was an offence, but what about the infliction of mental pain or suffering, which, according to article 1 of the Convention, was a constituent element of the offence of torture?

52. Referring to articles 2 and 11 of the Convention, she noted that the report contained no mention whatever of conditions of interrogation, police custody and detention incommunicado. With regard to article 3 of the Convention, she said she was surprised that paragraph 8 of the report stated that article 24 of the Constitution, under which the State could not extradite

its nationals for political offences, gave effect to article 3 of the Convention prohibiting extradition to a State which practised torture, a very different matter indeed. The report also provided no information on the question of expulsion or refoulement. Article 10 of the Penal Code might be sufficient to meet the requirements of article 5 of the Convention, but the provisions of article 7 of the Convention were not adequately guaranteed in so far as there appeared to be restrictions on the right to try a person whose extradition had been refused for one of the reasons referred to in article 2508, paragraphs 5 to 11, of the Judicial Code (para. 11 of the report).

53. Like Ms. Díaz Palacios, she had some questions about the Panamanian police force, which was in the process of being restructured. It was not at all advisable for such uncertainty to continue, for, when the police was unable to perform its functions, parallel police forces were soon established and they could be suspected of torture and ill-treatment. She would therefore appreciate further information on the planned reform and, in particular, on when it was likely to be completed.

54. The report contained no information on the possibility of filing complaints as provided for in article 13 of the Convention. She asked whether Panama had any general provisions with regard to amnesty and what effect a possible amnesty might have on the possibility of filing a complaint or bringing a civil suit. She also requested information on indemnification and the amount and nature of possible compensation. Lastly, she drew attention to the imprecise nature of the provisions reproduced in paragraph 17 of the report, which said nothing about the effect of proceedings in which evidence had been obtained as a result of torture (art. 15 of the Convention).

55. Mr. DIPANDA MOUELLE said that, like Ms. Chanet, he had some questions about the provisions of the Panamanian Constitution concerning extradition (para. 8 of the report). He also wished to know whether the fact that the State could not extradite its nationals for political offences meant that it could extradite them for non-political offences. Could a person be extradited to a State with which Panama had not concluded an extradition agreement? Noting that the report sometimes referred to Panama's "Political Constitution" and sometimes to the "National Constitution", he asked whether the same basic law was meant in both cases.

56. Mr. KHITRIN welcomed the quality of the oral presentation by the Panamanian delegation. If detainees received only 10 per cent of the wages for their work, he would like to have some idea of the amount that percentage represented. How often were sentences of capital punishment imposed and for what types of crimes? What penalties were laid down for failure to observe disciplinary rules in prisons? Did they include corporal punishment and deprivation of food?

57. Mr. MIKHAILOV requested some clarifications concerning the "disciplinary penalty" and the "criminal penalty" referred to in article 2120 of the Panamanian Judicial Code (para. 2 of the report). Who was empowered to impose those penalties and what criteria were used to distinguish between the offence of torture and disciplinary or administrative violations? Which criminal penalties were laid down for the offence of torture and did Panama take into account the grave nature of the offence, in accordance with article 4, paragraph 2, of the Convention?

58. Mr. PERLAS noted that, in its oral presentation, the Panamian delegation had referred to periodic visits by judges to prisons, apparently for the purpose of obtaining information about the situation of detainees. He asked for further information on the way those visits were conducted and, in particular, on whether detainees were systematically given a medical examination at that time. Did detainees have other means of submitting complaints to the authorities? It also appeared that, in most Panamanian prisons, men were not separated from women or minors from adults; information about the resulting problems would be appreciated. Noting that the Panamanian authorities intended to set up a programme for the rehabilitation of detainees, he asked what type of staff would be involved, especially as far as psychological treatment was concerned, and how the Government intended to achieve that objective. In conclusion, he asked whether drug addicts and drug traffickers were detained under special conditions and to what extent the prison population was affected by drug addiction.

59. The CHAIRMAN, speaking as a member of the Committee, welcomed the Panamanian delegation's detailed oral presentation of its report, which he had none the less found far too brief.

60. As members of the Committee had already pointed out, the Convention seemed to be incorporated into Panamanian law. However, some of the provisions of the Convention, such as those of article 15, could not be applied directly. Since no provisions to give effect to that article were to be found in Panamanian law, what internal measures were taken by the State to ensure that a statement made as a result of torture could not, in accordance with the Convention, be invoked as evidence?

61. He also asked whether any cases of torture had been recorded in Panama, especially in police stations, and, if so, whether proceedings had been instituted and sentences passed. Had compensation been paid in some cases? Lastly, he asked what plans were being made in Panama for the training of judicial and military personnel in areas with which the Convention dealt.

62. Mr. Velásquez, Mr. Sáenz Fernandez and Mr. Bonome Rivera (Panama) withdrew.

The meeting rose at 12.30 p.m.